

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #6	CCRB Case #: 201810753	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/11/2018 3:50 PM	Location of Incident: 155th Street and 8th Avenue Train Station	Precinct: 28	18 Mo. SOL 6/11/2020	EO SOL 1/26/2021	
Date/Time CV Reported Tue, 12/18/2018 10:03 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 12/24/2018 2:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kelvin Gomez	21491	951777	TB DT11
2. POF Melyssa Marcelin	14676	960867	TB DT03

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Davis	00184	957517	TB DT11
2. POM Travis Burks	16759	959522	TB DT03

Officer(s)	Allegation	Investigator Recommendation
A.POM Kelvin Gomez	Force: At the 155th Street and 8th Avenue subway station in Manhattan, Police Officer Kelvin Gomez used physical force against § 87(2)(b)	
B.POF Melyssa Marcelin	Force: At the 155th Street and 8th Avenue subway station in Manhattan, Police Officer Melyssa Marcelin restricted § 87(2)(b) breathing.	
C.POM Kelvin Gomez	Abuse: At the Transit District 11 stationhouse Police Officer Kelvin Gomez refused to provide his name to § 87(2)(b)	

## Case Summary

§ 87(2)(b) filed a complaint with the CCRB through the mail. This complaint was received on December 24, 2018.

On December 11, 2018, at approximately 3:00 p.m. § 87(2)(b) entered the 155<sup>th</sup> Street and 8<sup>th</sup> Avenue subway train station in Manhattan. § 87(2)(b) hopped over the turnstiles. PO Kelvin Gomez of Transit District 11 followed him down to the platform. PO Gomez threw § 87(2)(b) under a set of stairs, shoved him against a wall and wrestled him to the ground (**Allegation A: Force**). § 87(2)(g) PO Gomez asked for someone in the area to help him. A civilian assisted PO Gomez and put § 87(2)(b) in a chokehold. § 87(2)(b) passed out and when he came to, he was handcuffed and PO Melyssa Marcelin of Transit District 3 was allegedly sitting on his back restricting his breathing (**Allegation B: Force**). § 87(2)(g) § 87(2)(b) was taken to the Transit District 11 stationhouse where he saw PO Gomez and requested his name and shield number. PO Gomez did not reply (**Allegation C- Abuse of Authority**). § 87(2)(g)

§ 87(2)(b) was arrested and charged with assaulting a police officer, intent/fraud obtaining transit without pay, resisting arrest, obstructing governmental administration, assault and criminal possession of a controlled substance (BR16).

Body-worn camera footage and MTA footage was received for this incident (BR 01-08).

## Findings and Recommendations

### **Allegation (A) Force: At the 155<sup>th</sup> Street and 8<sup>th</sup> Avenue subway station in Manhattan, Police Officer Kelvin Gomez used physical force against § 87(2)(b).**

It is undisputed that § 87(2)(b) was at the 155<sup>th</sup> Street and 8<sup>th</sup> Avenue subway station in Manhattan and that PO Gomez approached him and told him to leave the subway station. It is undisputed that after PO Gomez told § 87(2)(b) to leave, § 87(2)(b) proceeded to smoke a cigarette. § 87(2)(b) put out his cigarette and jumped over the turnstiles. It is also undisputed that § 87(2)(b) was arrested for assaulting an officer, obstructing government administration and resisting arrest (BR16)

§ 87(2)(b) testified that he entered the 155<sup>th</sup> Street and 8<sup>th</sup> Avenue subway train station. As he decided which direction to take the train, PO Gomez approached and asked if he needed help. § 87(2)(b) had been in the train station for less than 15 minutes and did not remember what he did during this time. PO Gomez asked an MTA employee if § 87(2)(b) sold swipes. The MTA employee replied that § 87(2)(b) did not sell anything. PO Gomez told § 87(2)(b) he had ten minutes to leave the station. § 87(2)(b) walked towards a set of stairs leading out of the subway station and lit a cigarette. PO Gomez followed § 87(2)(b) and told him he was loitering and smoking. § 87(2)(b) put out his cigarette and returned inside the subway station. § 87(2)(b) hopped the turnstiles and went down a set of stairs to the train platform. PO Gomez followed § 87(2)(b) and tried to him, but § 87(2)(b) walked away. Then PO Gomez shoved him against a wall and threw him under a set of stairs on the uptown side platform. PO Gomez wrestled § 87(2)(b) to the ground. PO Gomez took out his pepper spray, which § 87(2)(b) took and threw it on the train tracks. § 87(2)(b) did not bite PO Gomez. § 87(2)(b) did not remember if he heard anyone say stop resisting. Two civilians, one of whom the investigation identified as § 87(2)(b) assisted PO Gomez. One of the civilians, (identified as § 87(2)(b) placed § 87(2)(b) in a chokehold, which rendered him unconscious.

No statement was obtained from § 87(2)(b) because he was uncooperative. No statement was obtained from the MTA employee because the physical altercation occurred on the train platform, not in view of the MTA booth.

PO Gomez testified that an MTA employee informed him § 87(2)(b) sold metro card swipes and acted disorderly. § 87(2)(b) did not let people in the subway station. He also asked civilians for money and threw soda cans and cigarettes on the floor. The MTA worker told PO Gomez she wanted § 87(2)(b) out. PO Gomez did not observe any of these actions but based on the MTA employees request, he asked § 87(2)(b) to leave the station. § 87(2)(b) did not comply and PO Gomez issued this order five times. § 87(2)(b) yelled and cursed at PO Gomez and smoked a cigarette. § 87(2)(b) threw the cigarette on the floor, spat on the floor and avoided fare payment by jumping the turnstile. PO Gomez followed § 87(2)(b) down a set of stairs leading to the train. PO Gomez grabbed § 87(2)(b) hand before he could get on a train. PO Gomez requested § 87(2)(b) identification. § 87(2)(b) pushed PO Gomez once in his chest and swung towards him. No contact was made. § 87(2)(b) was under arrest at that point. PO Gomez grabbed and threw § 87(2)(b) to the ground by grabbing his legs and taking his legs out from under him. § 87(2)(b) landed on his back. PO Gomez called out for help and a civilian, § 87(2)(b) who was in the area, assisted. PO Gomez told § 87(2)(b) to stop resisting and told him to give him his hands. § 87(2)(b) told PO Gomez that he would not provide his hands. § 87(2)(b) scratched PO Gomez's cheek and as PO Gomez called back up, § 87(2)(b) bit PO Gomez's right arm. § 87(2)(b) pulled away from PO Gomez. § 87(2)(b) pushed PO Gomez in his face and at one point his fingers were in PO Gomez's teeth. § 87(2)(b) grabbed one of § 87(2)(b) hands. Additional officers responded and assisted with placing handcuffs on § 87(2)(b).

PO Marcelin testified that she and PO Travis Burks of Transit District 3 were on the southbound D platform, when she observed PO Gomez, § 87(2)(b) and a construction worker, § 87(2)(b) struggling on the floor of the platform. She could not describe in any detail what actions were taken. PO Burks and PO Marcelin ran over to assist PO Gomez. PO Gomez's pepper spray was on the train tracks. One of § 87(2)(b) wrist was handcuffed. PO Marcelin and PO Burks finished handcuffing § 87(2)(b).

PO Burks' § 87(2)(b), § 87(2)(g) PO Marcelin. When they arrived at the platform, PO Burks pulled § 87(2)(b) away from PO Gomez and were able to handcuff him.

§ 87(2)(b) arresting officer, Police Officer John Davis of Transit District 11 testified that when he arrived on scene, § 87(2)(b) was handcuffed and PO Gomez's face was bleeding.

PO Gomez's line of duty injury report noted that during the arrest of § 87(2)(b) PO Gomez sustained a laceration when § 87(2)(b) scratched his right cheek. PO Gomez was bit on the right arm by § 87(2)(b). The report included a witness statement from § 87(2)(b) that § 87(2)(b) was not compliant. PO Gomez tried to affect an arrest, so § 87(2)(b) tried to help him. § 87(2)(b) tried to bite § 87(2)(b) and PO Gomez. Another civilian assisted them and together they put his arms behind his back and arrested § 87(2)(b) (BR 09).

TRI #2018-032-000172 was reported by PO Gomez. He noted that § 87(2)(b) pushed/shoved him, bit his right forearm and inflicted a laceration to his right cheek. The photographs attached to his TRI showed a laceration to PO Gomez's right cheek. It also noted that PO Gomez used a forcible takedown against § 87(2)(b) in defense of himself and to overcome resistance or aggression (BR10).

PO Gomez's memo book entries note that he went to § 87(2)(b) Hospital. § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

PO Gomez's body-worn camera footage, captured a physical interaction with § 87(2)(b). Due to the struggle, it was not clear what actions were taken to apprehend § 87(2)(b). The video did not capture an officer using any physical force against § 87(2)(b). The MTA footage did not capture PO Gomez's and § 87(2)(b) physical interaction.

Force may be used when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody, Patrol Guide Section 221-01 (BR12).

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

§ 87(2)(b)  
§ 87(2)(b)

**Allegation (B) Force: At the 155<sup>th</sup> Street and 8<sup>th</sup> Avenue subway station in Manhattan, Police Officer Melyssa Marcelin restricted § 87(2)(b) breathing.**

§ 87(2)(b) alleged that, when he regained consciousness, he was facedown, handcuffed and PO Marcelin was sitting on his back. § 87(2)(b) said repeatedly that he could not breathe.

Neither PO Gomez nor PO Burks saw an officer sit on § 87(2)(b) back or restrict his breathing. PO Davis did not see an officer sit on § 87(2)(b) back.

PO Marcelin denied she sat on § 87(2)(b) back or restricted his breathing.

The MTA footage did not capture an officer sit on § 87(2)(b) back. Although body-worn camera footage depicts PO Marcelin on scene, it did not capture her arrival or the moment in which this force was alleged to have occurred.

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

**Allegations (C) Abuse of Authority: At the Transit District 11 stationhouse, Police Officer Kelvin Gomez refused to provide his name to § 87(2)(b).**

§ 87(2)(b) alleged that while at the Transit District 11 stationhouse and while waiting to leave to go to the hospital, he saw PO Gomez and requested his name. PO Gomez did not reply.

PO Gomez never saw § 87(2)(b) after their interaction at the subway station. PO Gomez never had any conversation with § 87(2)(b) about his name. PO Gomez never heard § 87(2)(b) ask for his name during the incident.

PO Davis did not hear PO Gomez refuse to provide his name to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b) had been a party to four CCRB complaints and has been named as a victim in 31 allegations (BR13).
  - § 87(2)(b)
  - 
  - 
  -
- PO Gomez has been a member of the NYPD for seven years and has been a subject in two CCRB complaints and five allegations (4 for this case).
- PO Marcelin has been a member of the NYPD for three years and this is the first CCRB complaint to which she has been a subject.

### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- As of November 13, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR14).
- According to the Office of Court Administration (OCA), § 87(2)(b) between April 6, 2003, and December 13, 2019, § 87(2)(b) was convicted of § 87(2)(b) possession of a controlled substance, assault, escaping custody, possession of a weapon and trespassing § 87(2)(b) (BR15).

---

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date